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## How the Spider Catches the Fly: Referral Networks in the Plaintiffs' Personal Injury Bar

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*Leo J. Shapiro and Associates and the American Bar Association*

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NEW YORK LAW SCHOOL LAW REVIEW

SARA PARIKH

## How the Spider Catches the Fly: Referral Networks in the Plaintiffs' Personal Injury Bar

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## I. INTRODUCTION

The New York Law School symposium on the plaintiffs' bar is evidence of the growing scholarly attention to a once marginalized and overlooked sector of the bar. Aside from Jerome Carlin's seminal work on solo practitioners,<sup>1</sup> the plaintiffs' bar received scant attention among legal profession scholars. Until, that is, the past decade or so, when a number of legal profession scholars have turned their focus to the plaintiffs' bar.<sup>2</sup> Many of these scholars, including Carlin, have noted the important role that referral networks play in the plaintiffs' bar.<sup>3</sup> Personal injury lawyers, for example, often rely on other attorneys to refer them cases. These referring attorneys usually get a fee simply for referring the case.<sup>4</sup> The referral system stands in sharp contrast to the public image of plaintiffs' lawyers as opportunistic entrepreneurs who compete with each other for cases by advertising on late night television, chasing ambulances, and showing up at accident sites. Yet we know little about exactly who these referring attorneys are and how the referral system works. In this paper I draw on an empirical study of plaintiffs' lawyers to elucidate the structure of the referral system by describing how referral relationships are built and maintained, how the referral system relates to the stratification within the plaintiffs' bar, and how the referral system reproduces this sector of the bar.<sup>5</sup>

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1. JEROME CARLIN, *LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO* (1962).
  2. See THOMAS F. BURKE, *LAWYERS, LAWSUITS, AND LEGAL RIGHTS: THE BATTLE OVER LITIGATION IN AMERICAN SOCIETY* (2002); HERBERT M. KRITZER, *RISKS, REPUTATIONS, AND REWARDS: CONTINGENCY FEE LEGAL PRACTICE IN THE UNITED STATES* (2004); Tom Baker, *Blood Money, New Money, and the Moral Economy of Tort Law in Action*, 35 *LAW & SOC'Y REV.* 275 (2001); Stephen Daniels & Joanne Martin, *"It's Darwinism – Survival of the Fittest:" How Markets and Reputations Shape the Ways in which Plaintiffs' Lawyers Obtain Clients*, 21 *LAW & POL'Y* 377 (1999) [hereinafter Daniels & Martin, *Darwinism*]; Stephen Daniels & Joanne Martin, *It Was the Best of Times, It Was the Worst of Times: The Precarious Nature of Plaintiffs' Practice in Texas*, 80 *TEX. L. REV.* 1781 (2002) [hereinafter Daniels & Martin, *Texas*]; Leslie C. Levin, *The Ethical World of Solo and Small Firm Practitioners*, 41 *HOUS. L. REV.* 309 (2004); Jerry Van Hoy, *Markets and Contingency: How Client Markets Influence the Work of Plaintiffs' Personal Injury Lawyers*, 6 *INT'L J. LEGAL PROF.* 345 (1999); Jerry Van Hoy, Presentation at the annual meeting of the Law and Society Association: Professional Projects and Professional Reputations: The Indiana Trial Lawyers' Association and Status within the Plaintiffs' Personal Injury Bar (June 6, 2003).
  3. CARLIN, *supra* note 1, at 82; KRITZER, *supra* note 2; Daniels & Martin, *Darwinism*, *supra* note 2, at 383–88.
  4. The referral fee, like the attorney fee, is generally contingent on the outcome of the case. For example, the referring attorney may secure one-third of the attorney fee — or one-ninth of the total award — but only if the attorney prevails on the case.
  5. Information comes from in-depth personal interviews that I conducted with a stratified sample of sixty-two low-end, high-end, and elite plaintiffs' lawyers in Chicago. The majority of these interviews were conducted with attorneys who were identified from a random sample of case filings in the Cook County Circuit Court. In addition, interviews were conducted with eleven "elite" members of the Chicago plaintiffs' bar. Borrowing a method adopted by Heinz et al., the elite were identified before interviewing began through discussions with "informants" inside and outside the personal injury bar. John P. Heinz et al., *The Changing Character of Lawyers' Work: Chicago in 1975 and 1995*, 32 *LAW & SOC'Y REV.* 751, 753 (1998). Overall, eighty-two personal injury attorneys were contacted for this research and sixty-two (78%) agreed to participate. Eleven out of twelve elite agreed to participate. Drawing on social

The first part of this article discusses the literature on both “social network theory and analysis” and “resource-dependency theory,” which provide the theoretical framework for this study. I then discuss the particular nature of the plaintiffs’ personal injury bar in terms of its relevance to these theoretical frameworks. Because the stratification in the personal injury bar is strongly related to the referral system, in the second part of the article I briefly describe the hierarchy among personal injury lawyers. In the third and main part of the article, I discuss the structure of the referral system, its benefits and constraints, and how these relationships are built and maintained. Finally, in the conclusion, I note that the referral system both serves to reproduce the stratification in the profession, and the profession itself. I also argue that while the referral system involves significant trade-offs for the personal injury lawyer, the benefits of these referral relationships to the personal injury lawyer generally outweigh the sacrifices.

## II. SOCIAL NETWORKS IN THE ECONOMIC ARENA

I draw on social network theory and analysis to examine referral networks in the plaintiffs’ bar. Theory and research on social networks in the economic arena has proliferated in recent years. The basic premise underlying social network theory is that social structure is inherently relational.<sup>6</sup> Network theorists conceive of social structure as the “regularities in the patterns of relations among concrete entities.”<sup>7</sup> Social network analysis has contributed a great deal to our understanding of markets. Oliver Williamson identified two alternative modes of organizing in the economic arena: markets and hierarchies.<sup>8</sup> Hierarchies are vertical forms of integration exemplified by firms that encompass the complete spectrum of production activity. In the market form, firms instead purchase goods and services through exchange with arm’s-length trading partners, where suppliers compete with each other on the basis of price. For Williamson, the greater the market uncertainty, frequency of exchange, and required investment, the more likely firms would adopt a hierarchical rather than a market mode of organizing. However, Powell and Granovetter note that there is a third way of

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network theory and analysis, the full study examined the hierarchy in the profession, the cohesion of its members, the structure of the market for personal injury cases (the referral system), and the juxtaposition of professional cohesion and market competition. Sara Parikh, *Professionalism and Its Discontents: A Study of Social Networks in the Plaintiffs’ Personal Injury Bar* (2001) (unpublished Ph.D. dissertation, University of Illinois at Chicago) (on file with Richard J. Daley Library, University of Illinois at Chicago). This paper focuses on the referral system.

6. See, e.g., RONALD S. BURT, *STRUCTURAL HOLES: THE SOCIAL STRUCTURE OF COMPETITION* (1992); Harrison C. White et al., *Social Structure from Multiple Networks I.: Blockmodels of Roles and Positions*, 81 AM. J. SOC. 730, 730–33 (1976).
7. White et al., *supra* note 6, at 733.
8. Oliver Williamson, *The Economics of Organization: The Transaction Cost Approach*, 87 AM. J. SOC. 548, 551–77 (1981).

organizing that is “neither market nor hierarchy” but is instead through informal but relatively stable relationships.<sup>9</sup> The choice that firms face is not simply one of arm’s-length market ties versus vertical integration. Instead, they can retain their official autonomy in the market, while transacting with other firms in the context of long-term relationships.

Structural embeddedness refers to the pattern of more or less stable relationships in a given market or field. We can conceive of market relationships on a continuum. At one end are frequent transactions between exchange partners with long-term ties (embedded ties). At the other end are one-shot or highly sporadic transactions between exchange partners with no prior relationship (arm’s-length or market ties). Network theorists have argued and demonstrated that the embeddedness logic of exchange is perhaps even more prevalent than either the market or hierarchy model.<sup>10</sup> For example, in Wayne Baker’s study of the ties between firms and their banks, he found that pure market ties were almost nonexistent. Of the 1530 firms he studied, all but nine of the firms (over 99%) gave more than 50% of their business to their top three banks. Not only were pure market ties rare, pure embedded ties were quite common.<sup>11</sup>

Resource dependency theory is the perspective most often employed to explain the prevalence of embedded ties in the economic arena.<sup>12</sup> In the resource dependency perspective, economic actors in more uncertain environments will draw on their market relationships as a way of controlling the environment and reducing market uncertainty. In an uncertain market with relatively scarce resources, economic actors will seek ways to secure and stabilize the resources they need to compete. Long-term, embedded market ties allow them to do just that, without having to cede their market autonomy.<sup>13</sup>

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9. See Mark S. Granovetter, *Economic Action and Social Structure: The Problem of Embeddedness*, 91 AM. J. SOC. 481, 489–92 (1985). See generally Walter W. Powell, *Neither Market Nor Hierarchy: Network Forms of Organization*, 12 RES. IN ORGANIZATIONAL BEHAV. 295 (1990).

10. Wayne Baker, *Market Networks and Corporate Behavior*, 96 AM. J. SOC. 589, 593 (1990); Granovetter, *supra* note 9, at 493; Powell, *supra* note 9, at 299–303; Brian Uzzi, *The Dynamics of Organizational Networks: Structural Embeddedness and Economic Behavior*, 251–55 (1993) (unpublished Ph.D. dissertation, State University of New York at Stony Brook) (on file with author).

11. Baker, *supra* note 10, at 606–08.

12. *Id.* at 592–93; Ranjay Gulati & Martin Gargiulo, *Where do Interorganizational Networks Come From?*, 104 AM. J. SOC. 1439, 1439–41 (1999); Joel M. Podolny, *Market Uncertainty and the Social Character of Exchange*, 39 ADMIN. SCI. Q. 458, 458–61 (1994); Timothy Rowley, *Moving Beyond Dyadic Ties: A Network Theory of Stakeholder Influences*, 22 ACAD. MGMT. REV. 887, 895–907 (1997); Uzzi, *supra* note 10, at 75–78.

13. See, for example, Podolny, *supra* note 12, who studied exchange relations in two primary securities markets, one characterized by a relatively high level of risk or uncertainty, the other by a comparatively low level of uncertainty. In support of the resource dependency perspective, Podolny found that the greater the market uncertainty, the more likely economic actors were to engage in exchange relations with those whom they have transacted in the past. Consumers also turn to embedded ties in order to reduce uncertainty in their market transactions. DiMaggio and Louch found that consumers are more likely to turn to their social networks when making an infrequent purchase in which there is greater uncertainty over the

The plaintiffs' personal injury bar is a particularly fruitful arena for studying embedded market ties. Plaintiffs' lawyers operate in a highly uncertain market. Individual consumers often do not recognize the need for legal services, and personal injury lawyers and consumers are largely unknown to one another. The one-shot nature of personal injury practice also means that client relationships are not enduring, making it difficult to maintain and grow a practice.<sup>14</sup> In their 1995 study of the Chicago bar, John Heinz et al. found that plaintiffs' personal injury lawyers serve an average of 142 different clients per year. By contrast, general corporate lawyers serve an average of thirty-two clients per year, and personal injury defense lawyers an average of thirty-seven clients.<sup>15</sup> Unlike their corporate and in-house counterparts, plaintiffs' personal injury lawyers must continually strive to get new clients in order to get new cases. Further, the plaintiffs' personal injury bar is now among the most specialized sectors of the bar,<sup>16</sup> perhaps placing greater pressure on referral networks as a source of business. However, while large-firm corporate lawyers can cross-sell to existing clients, the plaintiffs' personal injury bar is comprised primarily of solo and small firm practitioners, making internal referrals less likely in this setting.

There is not only uncertainty with respect to getting cases, there is also risk associated with taking cases. Personal injury lawyers usually take cases on a contingency basis, in which they are only paid if the client recovers. Typically, the personal injury attorney secures one-third of the client recovery, but only if there is one. Because of this, there is a great deal of risk associated with accepting a personal injury case. The case referral system is one way — perhaps the most important way — that plaintiffs' personal injury lawyers reduce some of the uncertainty associated with their practice.

### III. STRATIFICATION IN THE PLAINTIFFS' PERSONAL INJURY BAR

The plaintiffs' personal injury bar ranks low among lawyers in terms of professional prestige.<sup>17</sup> Yet, within the plaintiffs' personal injury bar there is a hierarchy that is known to its members but less obvious to outsiders. At the top-end of the hierarchy are personal injury lawyers who handle the coveted high-value cases, control the bar associations that serve the profession and lobby on behalf of the profession. At the bottom-end of the hierarchy are personal injury

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product or the performance of the seller. Paul DiMaggio & Hugh Louch, *Socially Embedded Consumer Transactions: For What Kinds of Purchases do People Most Often Use Networks?*, 63 AM. SOC. REV. 619, 620–21 (1998).

14. CARLIN, *supra* note 1, at 145–49.

15. JOHN HEINZ ET AL., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR (2005) (unpublished data).

16. Heinz et al., *supra* note 5, at 761–62.

17. Rebecca L. Sandefur, *Work and Honor in the Law: Prestige and the Division of Lawyers' Labor*, 66 AM. SOC. REV. 382, 386–87 (2001).

lawyers who handle the more routine and lower-value auto accident and “slip-and-fall” cases. These “low-end” personal injury lawyers are largely detached from the professional associations and political activities dominated by the high-end practitioners.

While these strata are distinguished from each other on a number of dimensions, they do operate in a cooperative manner in the marketplace. Low-end personal injury lawyers often refer higher-value cases up the hierarchy. In turn, high-end practitioners refer low-value cases back down. Because the stratification within the personal injury bar plays a significant role in the referral system, I begin with a brief description of the stratification within the plaintiffs’ personal injury bar.

#### *A. Practice Characteristics*

The strata are differentiated based on the characteristics of their practice. Those in the low end tend to handle a high volume of smaller value cases (in the \$10,000–\$35,000 range). These low-end practitioners concentrate in the more routine auto accident and slip-and-fall cases. Low-end practitioners are also more likely to be solo practitioners, or practicing in smaller firms with just two to three attorneys per firm. High-end practitioners handle a smaller caseload of higher value cases (range from \$89,000–\$2.6 million) and often concentrate in medical malpractice disputes. Elite practitioners are much like other high-end personal injury lawyers. They tend to handle a smaller volume of high-value cases and often concentrate in medical malpractice cases and other more complex disputes. What sets the elite apart from other high-end practitioners is the upper end of their caseload. The largest verdict or settlement in the career of an elite practitioner averages \$27 million, compared to \$8 million for other high-end lawyers, and \$500,000 for low-end practitioners.<sup>18</sup>

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18. The stratification within the plaintiffs’ bar is not unique to Illinois. To see how it has been observed in New York, see Stephen J. Spurr, *Referral Practices Among Lawyers: A Theoretical and Empirical Analysis*, 13 LAW & SOC. INQUIRY 87, 92–108 (1988), in Indiana, see Van Hoy, *supra* note 2, at 345–66, in Texas, see Daniels & Martin, *Texas, supra* note 2, at 1782, and in Wisconsin, see Herbert Kritzer, *The Fracturing Legal Profession: The Case of Plaintiffs’ Personal Injury Lawyers*, 8 INT’L J. OF THE LEGAL PROF. 225, 225–50 (2001).



**Table 1: Practice Characteristics**<sup>19</sup>

	Low-end (N=32)	High-end (N=20)	Elite (N=11)
<b><i>Case Value Range</i></b>			
Mean	\$10–35,000	\$89,000–2.6 million	\$124,000–4.2 million
Median	\$5–20,000	\$50,000–3 million	\$100,000–3 million
<b><i>Largest Case in Career</i></b>			
Mean	\$542,000	\$7.9 million	\$26.7 million
Median	\$400,000	\$4.2 million	\$25 million
<b><i>Concentration</i></b>			
Auto accidents	56%	5%	0%
Medical malpractice	22	45	64
<b><i>Firm size</i></b>			
Solo practitioner	28%	0%	0%
Mean firm size	2.6	5.3	14.5
<b><i>Case volume</i></b>			
Mean cases per year (per attorney in firm)	9	23	12

### B. Personal Characteristics

In their personal characteristics, personal injury lawyers are more similar to each other than different. Lawyers in all strata tend to be white males who were educated at local law schools.<sup>20</sup> However, low-end practitioners are disproportionately younger — suggesting that there is mobility in this sector of the bar. High-end and elite practitioners are more likely to have attended one of the local Catholic law schools (DePaul and Loyola).<sup>21</sup>

19. As this was a stratified sample, the bases in this study do not reflect the distribution of the strata in the personal injury bar as a whole. Based on an analysis of case filings, completion rates, and respondent characteristics, I estimate that at least 80% of the roughly 2100 Chicago-area personal injury lawyers are low-end practitioners; 19% are high-end practitioners; and 1% are elite. Parikh, *supra* note 5, at 61, 78.

20. This contrasts with the corporate sector of the bar, which draws more heavily from lawyers with upper class backgrounds who were educated at elite or prestigious law schools. See generally HEINZ ET AL., *supra* note 15.

21. Elite practitioners invest heavily in their law school alma maters, establishing scholarships, funding chairs, and offering clerkships to promising students. This tends to reproduce the path to a high-end or elite practice, Sara Parikh & Bryant Garth, *Philip Corboy and the Construction of the Plaintiffs' Personal Injury Bar*, 30 LAW & SOC. INQUIRY 269, 289–96 (2005).

**Table 2: Personal Characteristics**<sup>22</sup>

	Low-end (N=32)	High-end (N=20)	Elite (N=11)
<i>Age</i>			
Under 35	31%	5%	0%
35–49	44	35	27
50 and over	25	60	73
Mean age	42	50	55
<i>Race and Gender</i>			
White	94%	95%	91%
Male	91	90	82
<i>Religion</i>			
Catholic	41%	45%	46%
Protestant	12	10	27
Jewish	38	30	18
<i>Law School Attended</i>			
Elite	3%	0%	9%
Prestige	9	10	9
Regional	22	10	9
<u>Local (net)</u>	<u>66</u>	<u>80</u>	<u>73</u>
Kent	25	25	9
Marshall	31	10	0
DePaul	9	25	18
Loyola	0	20	46

### C. Cohesion and Mobilization

Low-end practitioners are less integrated into the social networks, professional and political activities of the professions. Each participant was given a list of all the other respondents in the study (along with other personal injury lawyers not studied) and asked about their relationship to each of the other personal injury lawyers on a number of dimensions (heard of, on a first name basis, closely acquainted with, share advice with, refer cases to, etc.). Only 4% of the low-end are on a first name basis with each other, compared with 31% of the high-end and 100% of the elite. In social network theory parlance, the elite represent a “perfectly cohesive community.”<sup>23</sup>

The low-end are also less likely to hold membership in the American Bar Association (“ABA”), the Association of Trial Lawyers of America (“ATLA”) and the Illinois Trial Lawyers Association (“ITLA”). The majority of the high-end, and all of the elite hold membership in these associations. The high-end and elite are also more likely to serve on professional committees and lobby on behalf of the profession.

22. Parikh, *supra* note 5, at 91, 94.

23. This is not to suggest that the elite live in complete harmony with one another. The elite of the plaintiffs’ bar is characterized by both intense competition and cooperation, Parikh, *supra* note 5, at 211–13.

Finally, the elite are significant contributors to the Democratic Party. Based on publicly available data from the Illinois State Board of Elections, all of the elite respondents in the sample have contributed to political campaigns, with an average contribution of \$22,000 each per year. By contrast, 75% of the high-end contribute to political campaigns, contributing an average of \$3000 per year. Only 20% of the low-end make such contributions, averaging \$200 per year.

**Table 3: Cohesion and Mobilization**<sup>24</sup>

	Low-end (N=32)	High-end (N=20)	Elite (N=11)
<b><i>Cohesion</i></b>			
On first name basis with each other	4%	31%	100%
<b><i>Membership</i></b>			
ABA	38%	60%	100%
ATLA	38	85	100
ITLA	44	90	100
<b><i>Professional Activities</i></b>			
Serves on professional committees	12%	40%	100%
<b><i>Politics</i></b>			
Democrat	66%	90%	100%
Lobbies for profession	0	45	100
<b><i>Political Contributions</i></b> <sup>25</sup>			
Contributes to political campaigns	22%	75%	100%
Mean contributed per year (1994–99)	\$200	\$3,000	\$21,000

#### IV. BACKGROUND ON REFERRAL SYSTEM

The practice of referring cases to other lawyers is institutionalized in rules governing referral practices and the sharing of fees. Most states have adopted the American Bar Association's Model Rules of Professional Conduct ("Model Rules"), which allow an attorney to refer a case to another attorney and collect a fee for that referral.<sup>26</sup> The Model Rules stipulate that in order for there to be an exchange of fees, the client must be aware of and agree to the referral and fee-splitting arrangement. Further, when a referral arrangement is made, the referring attorney must agree to bear joint *legal* responsibility for the case.<sup>27</sup> The legalization of fee-splitting was believed to benefit consumers and referring attorneys, as well as the recipient of the case. Referring attorneys would benefit by securing fees in cases they referred out; recipients would benefit from the additional business; and consumers would benefit because they would be more likely to end up in qualified hands.

24. Parikh, *supra* note 5, at 91, 103, 197.

25. Illinois State Board of Elections, Campaign Disclosure, <http://www.elections.il.gov/CampaignDisclosure/ContribListSearches.aspx> (last visited Nov. 7, 2006).

26. MODEL RULES OF PROF'L CONDUCT R. 1.5(c) (1983).

27. *Id.*

Two market conditions gave rise to the legalization of fee-splitting with other attorneys. First, as noted earlier, personal injury attorneys must secure a new client for every case. Unlike attorneys practicing in the corporate sector, personal injury attorneys cannot rely on a steady stream of business from a small number of existing clients. Where the corporate sector expends energy maintaining existing client relationships, personal injury attorneys must acquire new clients in order to secure new cases. Second, most individual consumers are unaware of the different types of expertise within the legal profession. When a personal legal matter arises, individual consumers often turn to a lawyer they know who may or may not practice the kind of law specific to the case. Attorneys serving individual clients are frequently faced with cases that are outside of their expertise. The risk is that the attorney will take cases that he is unqualified to handle. Fee-splitting was designed to discourage this. The institutionalization of referral fees was thought to benefit the client, whose case would be more likely to end up in the hands of an attorney capable of managing the case. Most personal injury attorneys believe that the fee-splitting system does serve the client's best interest:

We live in a world where some lawyers are more capable than others. It is in the client's best interest to find the most capable lawyer he can to represent him. Unfortunately, the client is not in a very good position to know the difference. . . . So, the public good is really served by the referral system. The likelihood of the ordinary injured person to get to a better lawyer as a result of the referral system is tremendous. But, it wouldn't occur nearly as much unless there was some incentive for that mainline, street-location lawyer to do such a thing. (High-end, 7 lawyers, age 60).

While consumers are believed to have imperfect information about different attorneys in a jurisdiction, attorneys themselves are said to be more knowledgeable about the quality and capabilities of their peers. They are, it is believed, in a better position to assess a case and determine which attorney is more suited to handle the dispute. The practice of plaintiffs' personal injury law is much like a "glass house." Like professional athletes, CEOs in public companies, or high-profile actors, personal injury lawyers — especially those who try cases — practice their craft for the world to see. There are few domains as public as the courtroom, few arenas where one's successes and failures are as easy to measure and as visible to others, as long as they are paying attention. Lawyers do pay attention to the successes and failures of their peers; it not only helps them measure their own relative success, it also helps them determine who to send cases to.

In the case of law at least, compared to something like psychiatry, we don't practice our profession behind closed doors. We are available to be watched. There are public jury verdict reports. There are some of us who win and some of us who lose. Again, this information is not com-

municated to the public at large, but lawyers do know. Even the most mediocre, moronic lawyer will have a pretty good idea of who's doing a fairly good job out there. Even the biggest idiot knows that he'd rather send a case to somebody who's more likely to win than not. (High-end, 7 lawyers, age 60).

The legalization of fee-splitting benefits the referring attorney as well as the client. It is a relatively easy way for the referring attorney to make money, particularly on larger cases.

Referring attorneys send out cases because they don't do it themselves. Also, it's a pretty easy thing to make a phone call. Then have somebody call you up and tell you they have a check for you for \$100,000 or something. It's not a bad gig. . . . They are anxious to get the money. . . . They start spending the \$100,000 that minute, that instant. Maybe they are not spending it, but allocating it. (Elite, 21 lawyers, age 55).

Although most personal injury attorneys appreciate the business they get from other lawyers and believe that the client's interests are served by the referral system, many are ambivalent about fee-splitting. Referral fees are significant. Giving up a third or more of the attorney fee to a referral source can greatly affect the lawyer's recovery on the case. It is usually not a small price to pay. Although most high-end attorneys who engage in the practice view fee-splitting as a cost of doing business, a few openly resent sharing fees with attorneys who do no work on the case.

We have a lot of referrals, and it's difficult when you have to pay out your money and the fees to people who literally don't do anything. I mean, I've paid out hundreds of thousands of dollars to people who have had nothing but an ad in the Yellow Pages and then they get a phone call and they refer it to me. There's no other business I know that does that. But, I mean, I do take those cases if they're interesting. (High-end, 2 lawyers, age 60).

I think referring attorney fees are a disaster. I hate them. They are typically not earned. It is a ruse to pretend that they are earned. I do have lawyers, no question about it, who really do a big service to me in the handling, the co-counseling, the co-mutual professional responsibility of a client, but they are the exception, they are not the norm. . . . The majority of referring attorneys would love nothing better than to pass a client on to you and say, "send me a check." . . . It just strikes me that there is something inherently wacky in the marketplace that folks will receive, in this day and age, what will amount to a lot of money for doing nothing. (Elite, 18 lawyers, age 49).

Nevertheless, at the same time that they resent splitting fees, personal injury attorneys place great value on their referral partners.

This is a sensitive topic for lawyers. We jealously guard our referral partners. The law firm doesn't want it known what percent of our cases come in from other attorneys versus the public. We don't want the referring attorneys to know how dependent we are on them. And we don't want our competitors to know who we get our cases from because they might try to steal our referring partners. (Elite, 18 lawyers, age 49).

As I discuss later, personal injury lawyers make many sacrifices in order to build and maintain these relationships.

## V. THE STRUCTURE OF REFERRAL NETWORKS

### A. *Stratification and Referral*

The strata in the personal injury bar are differentiated in terms of how they get business. Low-end attorneys are more likely than high-end attorneys to have developed some sort of ethnic or occupation niche that provides a steady source of business. Low-end, neighborhood practices are particularly likely to draw from a niche market, tapping into the ethnicity of their local neighborhood. Occupation niches are less common than ethnic niches but they can provide a reliable source of business. For example, one low-end attorney makes his living primarily by representing cab drivers in auto accidents. Low-end attorneys are also much more likely to rely on advertising to generate business. Most of this advertising is not of the late-night television variety, but less costly advertising that targets their niche markets through neighborhood papers, ethnic radio, and other specialized media.

As others have found, attorney referral plays a greater role in the practice of the high-end personal injury attorney than the low-end personal injury attorney.<sup>28</sup> Stephen Spurr, in an analysis of case referral in New York, found that case referral was more likely to occur with higher value cases.<sup>29</sup> For attorneys in the low-end sector, about one-third of their business comes from other attorneys.<sup>30</sup> By contrast, attorney referral generates about two-thirds of the business for attorneys in the high-end and elite sectors. The role that attorney referral plays in this business is also seen in the relative size of their referral networks. Low-end attorneys have an average of six other attorneys who send them cases. High-end attorneys have an average of eighteen referral partners; the elite sector has the largest network of referring attorneys, averaging thirty-eight referral partners.

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28. CARLIN, *supra* note 1, at 82; Daniels & Martin, *Darwinism*, *supra* note 2, at 385.

29. Spurr, *supra* note 18, at 91.

30. This analysis also finds that attorney referral plays an important role in the high-volume, low-end practice. Attorney referral brings in an average of 40% of the business for the high-volume, low-end practitioner, compared to only 21% for the low-volume, low-end attorney.

**Table 4: Getting Business**<sup>31</sup>

	Low-end (N=32)	High-end (N=20)	Elite (N=11)
<i>Advertising</i>			
Advertises (net)	44%	10%	9%
Yellow Pages ad	22	10	0
Other advertising	44	0	9
Niche Markets			
Has niche market	44%	15%	18%
<i>Percent of Business Through Attorney Referral</i>			
Mean	30%	66%	66%
Median	15	72	70
<i>Number of Attorneys Who Send Them Cases</i>			
Mean	6	18	38
Median	4	10	23

### B. Embeddedness in Referral Networks

All respondents were asked to describe the characteristics of their top three referral partners, along with the origins and nature of their relationship. The 62 interviews yielded data on 154 referring attorneys.

Relationships with primary referral partners are long term and involve relatively frequent contact.<sup>32</sup> On average, attorneys in the low-end sector have known their primary referral partners for ten years, the high-end for nineteen years, and the elite for seventeen years. The high-end sector of the bar has more frequent contact with their primary referral partners (average of one time a week) than the low-end sector (one to two times a month). Importantly, referral relationships in the high-end sector appear to be *more* embedded than those of the elite. Given that the elite have significantly more referral partners than others practicing in the high-end sector, attorneys in the high-end sector, whose practices depend heavily on attorney referral, are more dependent on any single referral partner for business.

31. Parikh, *supra* note 5, at 88, 124.

32. Note that the data describe the characteristics of their top referral partners. These are the referral partners to whom they have the most embedded ties. They are not necessarily representative of all referral partners. However, in most cases, top referral partners account for a disproportionate share of an attorney's business.

**Table 5: Embeddedness in Referral Networks**<sup>33</sup>

All Referral Partners	Low-end (N=71)	High-end (N=56)	Elite (N=30)
<i>How Long Known Each Other</i>			
Mean years	10	19	17
Median years	10	17	15
<i>How Often Talk to Each Other</i>			
Mean	1-2 X/month	1 X/week	2 X/month
Median	2 X/month	3-4 X/month	1 X/month

To explain the difference in the level of embeddedness in referral networks, I turn to social network theory and resource dependency theory. Both strata of the personal injury bar face uncertainty in their practices. But the type of uncertainty they face differs. The low-end sector faces uncertainty in getting enough cases; they need a higher volume of their low-value cases in order to break even or make a profit.

[I take cases] pretty much across the board. I don't do medical malpractice, pretty much everything else. (Low-end, 4 lawyers, age 51).

Probably half of them are soft-tissue injuries, you know, car accidents, slip-and-falls, piece-of-shit cases, excuse my language. I refer the med mal out. (Low-end, 2 lawyers, age 37).

When you are just starting out, you will absolutely take anything. I won't do that now. (Elite, 21 lawyers, age 55).

The high-end sector faces greater uncertainty in terms of the cases themselves. Liability is more costly and difficult to assess and establish in a medical malpractice case or an airplane crash than it is in an automobile accident.

When you get into malpractice, that's completely different than the other personal injury cases. . . . When two cars collide out there at LaSalle and Wacker, I can represent either one, and I know I can, I can do that, we can just process the case. I don't even have to be around to do it. But, when someone is over at Presbyterian and had surgery, something goes wrong, there's no way I can know that I have a case. They can come in and tell me they do, they can tell me what they think, they can say, "the doctor gave me 12 pills, and they got me sick, and I'm paraplegic because of it." I have no idea. So, there are different levels. (High-end, 2 lawyers, age 60).

The problem for me as a business organization is it is real easy for me to evaluate car crash cases. That is not rocket science. That is not neurosurgery. Evaluating a neurosurgery case is neurosurgery. Do you see what I mean? (Elite, 18 lawyers, age 49).

33. Parikh, *supra* note 5, at 128.



Perhaps even more salient for explaining the high-end sector's particular dependence on social networks for their cases is the relative scarcity of larger value cases. Because consumers are not aware of the capabilities of different personal injury attorneys, they usually turn to an attorney they know who may or may not be qualified to handle the case. Referral relationships provide the avenue by which the relatively rare higher value cases make their way to the high-end sector of the bar. In other words, embedded referral relationships in the high-end sector arise out of the high-end sector's need to secure not just resources, but scarce resources: high-value cases. Low-value cases are not scarce, but plentiful, and can be secured by appealing directly to the consumer through advertising, client referral, and the like.

### *C. The Origin and Creation of Referral Relationships*

Referral relationships are usually personal rather than firm relationships. Referral partners are typically tied to a particular attorney, rather than to the firm. As Brian Uzzi found in his study of entrepreneurs in the New York apparel industry, prior social relationships often become the basis for, and preexist, the economic relationship.<sup>34</sup> Starter referral relationships in the personal injury bar often develop out of school or other social ties. These ties may not be activated until the attorney feels pressure to bring in his own clients. One young personal injury attorney described his awakening when he realized the benefit of law school relationships in building a referral base.

As I've gotten older, I think my law school class understands the notion of referrals, and now we're starting to do it with one another, whereas several years ago, we didn't. You really didn't appreciate it. Now, I have several classmates out on their own doing their own work, and I know I have one guy that does real estate closings, one guy does divorce; when I get a divorce case I will call him up. (Low-end, 5 lawyers, age 33).

As they progress in their careers, law school ties become secondary. Older attorneys develop their referral relationships through relationships with other attorneys, through professional associations and by being on the same or opposing side of a case.

Elite attorneys may also develop referral relationships through their known successes and general reputation in the community. In these cases, referral partners will seek them out. However, most referral relationships develop out of prior professional or social ties.

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34. Uzzi, *supra* note 10, at 48.

**Table 6: The Origin of Referral Relationships**<sup>35</sup>

All Referral Partners	Low-end (N=71)	High-end (N=56)	Elite (N=30)
<i>Origin of Referral Relationships</i>			
Professional	52%	61%	67%
Social	27	18	13
School	21	13	0

Turning these ties into referral relationships is often simply a matter of telling other lawyers what kind of work they do.

It's the most natural thing in the world. Who's your buddy? Who's your pal? This is what I do, this is what you do. I swear to God, if I get a divorce case, it's yours, if you get a personal injury case, it's mine. (Low-end, solo practitioner, age 42).

## VI. CHARACTERISTICS OF REFERRAL PARTNERS

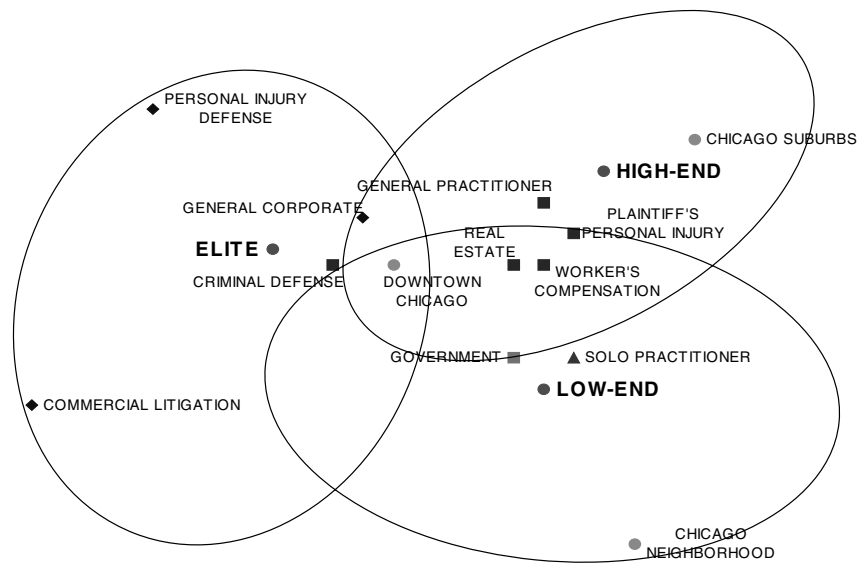
### A. Practice Characteristics

Cases come to personal injury attorneys most often from non-personal injury attorneys. Referring attorneys might be general practitioners, criminal defense attorneys, workers' compensation attorneys, or even corporate attorneys, including personal injury defense lawyers. However, personal injury cases most often come to personal injury lawyers through other small-firm lawyers practicing in the "individual hemisphere" of the bar. The corporate sector is underrepresented in the referral networks of personal injury attorneys, accounting for less than 20% of top referral partners among both low-end and high-end personal injury attorneys. By contrast, over 80% of all attorneys practice some corporate law and the corporate sector accounts for 64% of the total legal effort of the bar as a whole.<sup>36</sup> The elite of the personal injury bar enjoy a disproportionate share of corporate referral partners. About one-third of their top referral partners practice in the corporate sector. Relationships with the corporate sector are coveted because corporate law firms and personal injury defense firms generally have policies precluding them from accepting referral fees.

While the majority of top referral partners are non-personal injury attorneys, personal injury attorneys do send cases to other personal injury attorneys. For the low-end sector, personal injury attorneys comprise about one-quarter of their top referring attorneys; for the high-end sector, one-third of their top referring partners are other personal injury attorneys.

35. Parikh, *supra* note 5, at 128.

36. Heinz et al., *supra* note 5, at 765.

**Figure 1: Characteristics of Referral Partners**<sup>37</sup>

Whether referral partners are personal injury lawyers or non-personal injury lawyers, the exchange of personal injury cases largely occurs in a local market. Many of the high-end and the elite do get some cases from out-of-state. However, their top referring sources are nearly always based in the metropolitan area. Of the 154 primary referring attorneys inquired about, only three are out-of-state and four are downstate. In most cases, referral partners are based in the downtown business district. However, a significant minority of low-end attorneys, particularly those practicing in the neighborhoods, have strong referral relationships with other attorneys in their neighborhood. Likewise, many high-end sector attorneys have developed strong referral relationships with suburban attorneys.

I started out being active in some of the suburban bar associations and they send the cases to me. . . . There's one that's unusually prolific. He practices real estate, divorce, criminal, minor PI. Heavy emphasis on real estate. He encourages the referrals from real estate agents. Everybody he represents doesn't have a lawyer. So, now he says — he's the personable sort — he says, "hey, I lose money on this. I like to help people buy or sell a house. But, call me when you get in an accident or you get a ticket or you need this or that." And, they do. I don't know how he does it but he does, and the fallout, in terms of other business including personal injury, is pretty amazing. (High-end, 2 lawyers, age 67).

37. Parikh, *supra* note 5, at 131.

### *B. Personal Characteristics*

Referral relationships are largely homophilous. That is, personal injury attorneys share the same personal characteristics as their referral partners. Referral networks are largely peer networks. Attorneys in both strata develop referral relationships with other attorneys in their age cohort. Referral partners, like the personal injury attorneys they send cases to, are predominantly white males. This largely reflects the gender and racial composition of the individual hemisphere of the bar.

While there are few African-American attorneys in the plaintiffs' personal injury bar, or in the individual hemisphere of the bar generally, they seek each other out in their referral networks. All of the top referral partners of the three African-American attorneys interviewed are African-American themselves. However, the advantages of being a minority in the personal injury bar do not necessarily extend to women. The referral partners of the few women<sup>38</sup> in the sample are predominantly white men. None of the women interviewed are in solo practices, and five of the seven work in firms where their male partners are largely responsible for building and maintaining the referral relationships. In contrast to the few African-Americans interviewed, the women say that they have had less success building referral relationships with other women, and often feel that they are at a disadvantage when it comes to building referral relationships in general. Women attribute this partly to the difficulty of infiltrating the male bastion of the personal injury bar, partly to women's personal and family obligations, and partly to problems they encounter in building networks with other women.

## **VII. REASONS FOR REFERRAL**

### *A. Case Type*

Non-personal injury attorneys refer cases to personal injury attorneys because, quite simply, they do not handle personal injury cases. These referring attorneys might be loyal to a particular personal injury attorney, or, recognizing the stratification in the personal injury bar, they might send different kinds of cases to different kinds of attorneys.

He kind of has some lawyers do his small to medium stuff and some who do his really big stuff. I'm the small to medium guy — for now.  
(Low-end, 3 lawyers, age 34).

Personal injury attorneys also refer cases to other personal injury attorneys in recognition of the existing stratification in the personal injury bar. Attorneys practicing in the low-end sector often secure smaller cases from high-end attorneys who do not handle smaller cases:

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38. I did not find one female African-American personal injury attorney in my sample.

There is one law firm that I consistently get cases from, and they will refer anything to me that's under \$50,000 because they're doing so well that for them that's considered a small case. (Low-end, 7 lawyers, age 27).

If the case is just too small for us to handle, I'll refer it to somebody. Normally I will not ask for a referral fee because I don't want to be involved at all. If it's a small case, I'll say, "here, just take it." There's a firm that I know of, some young attorneys who refer bigger cases to me because they don't have the expertise to handle them. I will sometimes, if I get a call on a small automobile case that we don't handle, I'll just refer it to them. I'll tell them, "it's yours, just handle it." (High-end, 10 lawyers, age 53).

Likewise, attorneys practicing in the high-end sector often secure larger, more complex cases from low-end attorneys who do not feel comfortable, or do not have the resources to handle larger cases. This happens most often with medical malpractice and product liability disputes because of the complexity of the cases, the financial expenditures, and the level of expertise required. Many of these cases flow from attorneys in the low-end sector, who are less likely to handle these disputes, to those in the high-end sector, who do handle these disputes. One high-end attorney discussed the significant grief and anxiety that comes with handling higher value, higher stakes cases:

The difference between handling a \$3 million case and handling a \$100,000 case is an enormous amount of responsibility, grief, and agony, and work and responsibility that the lawyer incurs. And then, of course, there are always the financial expenditures. (High-end, 2 lawyers, age 60).

A few high-end attorneys, usually those with smaller practices, say that they are especially known for handling not only complex, but also particularly challenging cases. These cases may involve pushing the edges of personal injury law, such as establishing liability in a new area. Or, they may have particularly difficult liability facts, but significant injuries. These high-end attorneys will secure cases from both strata of the personal injury bar:

I seem to get a fair number of tough [cases]. Apparently, I have a reputation for being willing to take on tough cases. I guess some of them may figure that I'm willing to take them while others may not. They are tough in terms of liability, but serious [injuries]. . . . I've taken several cases where someone was badly wronged and there was some kind of principle involved. (High-end, 2 lawyers, age 56).

Referring a big case to a high-end attorney is not just done because of his expertise. It is believed to be a good strategy for dealing with defense counsel. Many high-end attorneys and the elite are known by the insurance companies for

taking good cases and for working and fighting hard on those cases. Bringing in a big gun is believed to get the insurance company's attention and increase the chances of a decent settlement.<sup>39</sup> Even some high-end attorneys will send certain cases to other, more prominent, high-end and elite attorneys. Though it is rare to handle both personal injury plaintiff and defense cases, one high-end respondent in the sample straddles both worlds. He discussed the significance of having a big name plaintiffs' lawyer:

I'm referring out more medical malpractice cases these days. It's in my client's best interest to get someone who tries and is successful doing a lot of med mals, okay? Somebody who has a name in that area . . . to whom, when the complaint hits the desk of the adjuster for the insurance company, the [adjuster] will say, "Oh Jesus Christ, we've got to deal with this guy!" Look I'll tell you, this insurance client of mine, I can tell when I get a case from them, I can tell right off the bat by who the [plaintiffs'] attorney is whether it's something that we've got to be worried about. Because [the big plaintiffs' lawyers] don't take crap, they don't take crap. I've defended cases against these guys too. . . . They've got a reputation. They will not mess around, and they won't take junk, okay? They won't take a marginal case. . . . They want solid liability and solid damages, that's what they want. (High-end, 4 lawyers, age 43).

High-end attorneys do, on occasion, refer cases to other high-end attorneys who have a very specialized niche. If an attorney has success with a certain type of case, the word spreads and he is likely to receive more of those cases. This serves to deepen his expertise and broaden his reputation in a given area. Some personal injury attorneys, usually high-end attorneys, have developed an expertise and reputation in a highly specialized substantive area such as asbestos litigation, or appellate work. Asbestos litigation tends to pattern, like breast implant cases, or tobacco litigation. In these types of cases the defendants involved are often the same from case to case. There is generally a universal set of facts and documents that plaintiff attorneys can rely on to establish liability. Issues of causation also pattern, as do the nature and extent of the injuries. For this reason, attorneys with less experience in these matters will often refer them out to a personal injury attorney with significant expertise in these cases.

[I refer out cases] where I think they've had a lot of experience, skill demonstrated, and where there is a huge learning process and investment of time on my part. I can think of a firm in town that handles a lot of asbestos cases. Or another, breast implants — hundreds of them. It's not really in the client's interest for me to take on one case and learn all that and essentially be piggybacking on the other lawyer's work anyway. (High-end, 2 lawyers, age 56).

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39. See KRITZER, *supra* note 2, at 219–20.

An attorney with a narrow niche in one of these areas gets cases, not just from other sectors of the bar or from the low-end sector, but also from his peers. In fact, the attorney in the sample with the greatest number of reported referral partners from *within* the personal injury bar is one who specializes in asbestos litigation. The second highest internal referral base was found for an attorney who specializes in appellate work. Unlike other sectors of the bar, the practice of personal injury law is not one of writing briefs, but of discovery and persuasion. Attorneys who specialize in appellate work are known and well respected by other personal injury attorneys for their knowledge of the law and their grasp of legal precedent. They are often brought into a case if it is up on appeal. Again, they are likely to get cases from both sectors of the personal injury bar.

Personal injury attorneys also refer out cases if they have a conflict of interest. Conflicts happen most often if the case is against an expert witness they may have hired for their side in another case. The high-end and elite in the personal injury bar use these conflicts as an opportunity to send the case to one of their peers. High-end attorneys also give referrals for out-of-state cases. Though they may take some of these cases, given the time and travel involved, it is often not worth taking a case out of state. Further, particularly in specialized areas like medical malpractice, the law varies from state to state and the high-end attorney is reluctant to take a case involving a whole new set of laws and legal nuances.

### *B. Stage of the Case*

Case referral also occurs due to the stage of the case. Personal injury attorneys are often referred cases from attorneys who practice personal injury law, but who either do not like to or do not feel competent to take a case to trial if it does not settle. A few low-end attorneys with a significant referral business have built their referral networks by coupling with partners who do not do trial work. Non-trial referral partners also contribute to the practice of the high-end personal injury attorney. Many times these cases come in after the referring attorney has worked up the case and attempted to settle it. Fees may be negotiated, in part, based on how much work the referring attorney has done on the case. Like a relay race, the referring attorney takes the case as far as he can, and then passes the baton if he does not get to the finish line.

We'll be working on a case and then the case becomes too large, and we're hesitant to take it to trial, because of our lack of experience or discomfort. This can happen with either a big case or a case that is very difficult, complex. (Low-end, 3 lawyers, age 28).

A lot of guys I know, they get cases that they try everything they can to settle them before a lawsuit. I get them after they beg the adjuster for money and they can't make it work. So, then I have to file [the case]. That's kind of my niche. (Low-end, solo practitioner, age 40).

We primarily get referrals from other attorneys who don't handle personal injury work. Or, they handle it and they can't settle it and they don't handle litigation. So, they will handle it through the prelitigation stage and if they can't settle it, they will send it to us. (High-end, 13 lawyers, age 38).

In these types of referral relationships, the balance of power can shift to the recipient personal injury attorney, who comes in to "save" the referring attorney. Personal injury attorneys let their current and potential referral partners know that they will help them out if they get into trouble on a case.

I offer that if [the referring attorney] has anything they need help with, to let us help them. [I tell them,] "if it gets to the point when you feel it's over your head, just let me know." (Low-end, 3 lawyers, age 38).

Sometimes the referring attorney is a heavy advertiser who does not try cases. Mass market advertisers comprise a small, but not inconsequential, part of the referral base of both low-end and high-end personal injury attorneys. Heavy mass market advertisers run the gamut in terms of how their practices are set up. Some are simply larger firms who secure a significant share of their cases from advertising. These firms invest in advertising and have a front office staff that is devoted to screening telephone calls. However, they also have a full staff of attorneys that handle cases for the firm. These advertisers tend to concentrate in lower value cases, and act like other low-end firms in many ways. The one difference between these and other low-end firms is their size. Advertising can generate a significant volume of cases. Firms that advertise heavily to the general mass market often have more lawyers to handle the volume of cases that they take. Other advertisers are set up more like brokerage houses than law firms. These advertisers have telephone banks and standardized intake forms to collect basic information on cases that come in. They screen the case and then quickly refer it out to one of a pool of selected attorneys, collecting fees for these referrals. Other advertisers are somewhere in between the two extremes. These advertisers are set up to screen cases, do some initial investigation, and then refer it out only if it does not settle quickly. Like the broker advertisers, they often have a pool of attorneys to whom they refer cases:

There are a lot of attorneys who don't go into the courtroom. If you watch a lot of the advertising on television, quite a few of them do not. They do super volume, spend a lot of money on advertising, and they send [the cases] to attorneys. They have a set rotation of attorneys. These particular attorneys I get cases from will attempt to settle them if they have an adequate case. They have the secretarial and paralegal staff more than they have attorneys. That's where the bulk of their work is done, getting together medical bills, getting together the pictures if necessary, whatever is necessary, submitting them and hoping



to work out a deal. Some, after they got it, they will refer it out right away. If they know by the insurance company that it will not settle — there are some insurance companies that you know will not settle, they will force you into court. There are other ones that you know will have a better shot of settling. (Low-end, solo practitioner, age 28).

The referral patterns in the personal injury bar serve to reinforce and reproduce the stratification in the profession. The high-end lawyer secures more high-value cases and the low-end lawyer secures more low-value cases. Attorneys with a particular skill set or area of expertise are recognized for that expertise in the cases they are sent.

### *C. Adaptability and Change*

Referral relationships not only reproduce the stratification in the plaintiffs' personal injury bar, they also reproduce the profession. The referral system can facilitate the career of an attorney just starting out, trying to change his practice, or winding down his practice. Referral networks can help a young attorney just building his business. It is a common practice in the personal injury bar to help young attorneys by sending them smaller cases. Oftentimes, when a young attorney leaves a personal injury firm to go out on his own, the firm will give him cases to start his practice with and subsequently send smaller cases to him that they don't want to take.

There was a lawyer, a young lawyer, developing his own practice, and I was referring him cases that were too small, to help him build his practice and to help me have sort of an outlet for these cases. (Low-end, 2 lawyers, age 52).

With a smaller case that I don't want to keep in-house, I'll give it to somebody who is closely connected to the firm, like [one of the young attorneys who just left the firm to start his own practice]. They send us cases that they can't handle and they leave here with cases. [I give them cases] because I want them to succeed. If they fail, I fail. I'm their mentor; they have wives and children. (Elite, 18 lawyers, age 49).

Referral sources not only help to build a practice, they can shape a practice. One young attorney developed a niche in lead poisoning cases because of a relationship with one referral source who decided that she no longer wanted to handle lead poisoning cases. The referring attorney sent over all of her lead poisoning cases.

I have started concentrating on minor lead poisoning cases. [Another attorney] was withdrawing on a lead poisoning case and we were taking over. I called her to say, "can I have your file?" And we started talking and she said, "if you want that one, I've got 17 others sitting here." That's how it started. (High-end, 5 lawyers, age 30).

Referral networks can also help an attorney change or modify his practice. Another respondent, a low-end personal injury attorney, has recently decided to move away from personal injury and instead concentrate on commercial plaintiffs' work. His referral network gives him an avenue to dispense of the cases that he no longer wants to handle.

I've skewed my practice away from personal injury cases and toward the business tort area, which is like basically unfair competition. . . . I can still do personal injury; I know how to do them. I just don't want to do it. [When I get those cases now,] I've got two med mal guys [I'll refer to], two workers' comp guys, I've got a general personal injury guy, I've got a police brutality guy. (Low-end, 2 lawyers, age 37).

A high-end attorney uses the referral system to offload less promising cases that the firm does not want to handle.

We've now decided that there are a certain number of cases we have that we're just not set up to handle. There's a package that we have put together of about 50 smaller cases, bump and bruise type cases, that we took on as a favor for family or friends. We're referring them en masse to [attorney X] who is perfectly set up to handle them. Something that goes into the formula is whether there is enough of a fee available for us to bring in another law firm. These 50 cases are cases that came directly to us, so we don't have to worry about the fee. We'll get a fee from these. (High-end, 5 lawyers, age 42).

Steady referral relationships also provide the personal injury attorney with a means of getting through the slow periods in his practice. When asked what he does to encourage referrals from other attorneys, one personal injury attorney said that when times are slow he will call his referral partners and ask them for business.

Sometimes I call them up and ask for business. Everybody has some cases floating around, and sometimes they just don't get around to looking through them and seeing what they can refer out. (Low-end, 4 lawyers, age 51).

Referral networks also ease the transition to retirement. Oftentimes, personal injury attorneys who do not like to try cases are older attorneys who are tired of fighting the fight every day, of going to court, of carrying the burden of a difficult or labor-intensive case. Many of these older attorneys had very active practices at one time, but have decided to scale back and let others do the heavy lifting. Referral relationships give them flexibility, allowing them to adapt to current circumstances, but not give up their practice altogether.

[I'll refer out cases,] if they're too involved. Because I've had it, at this stage in my life. If they're too involved, or if the other side starts going into court on very minor matters, very minor motions, and I just don't

care to go downtown every week on the same case, so I'll refer it to somebody else whose office is a block away from the courthouse. (Low-end, 2 lawyers, age 71, neighborhood).

I know a lot of lawyers, especially older people, older lawyers, who say, "I just don't want the grief, I want to go home, go to a restaurant and relax. I don't want to walk around the way [respondent] does all the time, thinking about his cases and the tremendous responsibility of it all." (High-end, 2 lawyers, age 60).

Referral networks also enable personal injury attorneys to retire without abandoning their referral sources and past clients. Referral sources often continue past the first generation in the firm and are handed down to younger attorneys as senior staff change their practice or retire. In this way, social capital is transferred to the next generation, and the cycle continues:

The man that I was working for before, he's in the process of retiring. He's up in his sixties and just wanted to kind of relax. What I've done is arrange that [my current firm] would hire me and I would bring the cases with me, so I took his caseload of about 350 cases and brought them with. (Low-end, 7 lawyers, age 27).

In summary, the referral system ties the personal injury bar to other sectors of the bar. Most cases come to the personal injury attorney through other small-firm attorneys serving individuals. However, personal injury attorneys also send each other cases, and in so doing, they recognize the stratification and particular niches within the personal injury bar. In this way, the case referral system reinforces the stratification within the personal injury bar. However, it also provides an avenue for entry, exit, and change. In doing so, it also reproduces the profession.

## VIII. THE BENEFITS OF LAWYER REFERRAL

### A. *Status Enhancement*

Having a referral-based business is a hallmark of professional success. Attorneys who secure a significant share of their business from other attorneys are believed to enjoy a better reputation among their peers. Andrew Abbott discusses "professionals' professionals who do not sully their work with nonprofessional matters."<sup>40</sup> The "distinguishing mark" of "high-status professionals" is that they "work in a purely professional environment."<sup>41</sup> Similarly, Hall discusses the reputed practices of colleague-oriented physicians who rely on other physicians for their business.<sup>42</sup> Like these "doctors' doctors," attorneys with a referral business

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40. ANDREW ABBOTT, *THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR* 118 (1988).

41. *Id.*

42. Oswald Hall, *Types of Medical Careers*, 55 AM. J. SOC. 243, 247-48 (1949).

are “lawyers’ lawyers.” It is a compliment to have your peers send business to you and entrust you with their clients.

I think there is a feeling of accomplishment that another lawyer recognizes your specialty. . . . I like getting business from lawyers who think I’m competent. There is a feeling of, “Wow! I must be okay if my peers give me business.” Now there are some lawyers I don’t want business from. (Elite, 24 lawyers, age 75).

It also allows them to maintain an air of professionalism by minimizing the amount of effort that they must put into the business side of their practice. Many personal injury attorneys are highly ambivalent about all aspects of solicitation. Getting business through other attorneys allows the personal injury attorney to maintain some distance from aspects of the *business* that are unseemly. Personal injury lawyers are self-conscious about their profession’s reputation. They often attribute the profession’s low prestige to the manner in which some personal injury lawyers solicit business. Advertising and ambulance chasing are often considered to be denigrating to the profession. A referral-based business lifts their feelings of professionalism and enables the personal injury attorney to avoid some of the more distasteful means of getting business, such as advertising or chasing cases.

The bottom line is that I didn’t get a law degree to be a traveling salesman. You know, I like to try cases. (High-end, 3 lawyers, age 53).

I don’t mean to sound hoity-toity, because I know good attorneys who advertise. I think if you were to ask most plaintiff PI attorneys who have a desire to have a respected reputation in Chicago, given their druthers . . . I think, to a person, they’d say they’d rather not have to advertise. . . . Having a good, strong referral base means that you don’t have to do the other things that most attorneys desiring respect would want to avoid: advertising, chasing, having to work really hard [to get cases]. (High-end, 5 lawyers, age 35).

### *B. Market Enhancement*

Those who study social networks in the economic arena not only look at the structure of those networks, but also at the implications that those networks have for the system and its actors.<sup>43</sup> Many have noted that, contrary to being market imperfections, embedded ties are actually market enhancing. Among other things,

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43. For example, in his study of the options exchange, Baker found that embedded ties stabilized price volatility. See Wayne E. Baker, *The Social Structure of a National Securities Market*, 89 AM. J. SOC. 775, 803–05 (1984). In another study, Palmer found that a firm’s centrality in certain business networks provided some protection against hostile takeover. Donald Palmer et al., *The Friendly and Predatory Acquisition of Large U.S. Corporations in the 1960s: The Other Contested Terrain*, 60 AM. SOC. REV. 469, 473–75 (1995).

embedded relationships are said to promote trust, efficiency, fine-grained information transfer, joint problem solving, and quality.<sup>44</sup>

This study finds that referral relationships in the personal injury bar, like embedded ties in other markets, do enhance the market for personal injury cases. It is largely through referral networks that clients find their way to qualified attorneys. In his study of attorney referrals in New York State, Spurr found that it is because of the referral system that higher value cases are more likely to be handled by higher quality lawyers.<sup>45</sup> Further, aside from the obvious benefit of providing a steady source of business for the personal injury attorney, referral networks also provide other individual and collective benefits for members of the profession.

### C. *Efficiency*

Referral relationships provide a more efficient way of securing good cases and offloading less promising ones. Because many referring attorneys prescreen the case before sending it along, personal injury attorneys say that cases coming through attorney referral are often of better quality and the injuries more likely to be legitimate than those cases that come to the attorney directly. In this way, having referring attorneys' prescreen cases means less screening for the personal injury attorney, and perhaps better cases. Further, because referring attorneys often practice in another area of law, they can then provide a place to *send* cases to. Personal injury attorneys, like other attorneys serving individuals, routinely come across cases that are not in their specialty. If they choose not to take these kinds of cases, they want to have a reliable and efficient way to get the cases off their desk.

Most attorneys are going to want to make money doing what they know and they're not interested in doing something that they don't know how to do, if they're smart. It's like, this is out of my area. You have to be very focused. You can't waste much time. You got to move along. (Low-end, 3 lawyers, age 38).

### D. *Fine-Grained Information Transfer and Joint Problem Solving*

Referral relationships in the personal injury bar also exhibit fine-grained information transfer. Personal injury attorneys communicate details about their practice to their long-term referral partners. Knowing these details helps both parties do their jobs more effectively. Some personal injury attorneys are quite conscious of training their referring attorneys in the finer points of their relationship.

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44. See generally Granovetter, *supra* note 9; Powell, *supra* note 9; Uzzi, *supra* note 10.

45. See Spurr, *supra* note 18, at 91-92.

## HOW THE SPIDER CATCHES THE FLY

A lot of PI lawyers don't do trial work, ninety percent of them, in fact. They'll take it and see if they can settle it. If they can't, or if they know initially that the case is pretty complicated, they'll refer it straightaway. Depends on how hard you train them. I train them hard because I don't want a case after it's been butchered. If it's complicated, get it to me early. Otherwise I won't touch it. [You train them] by basically doing just what I said. You reject messy cases. (High-end, 7 lawyers, age 60).

Years ago I used to file med mal, and then find out that it might not be that serious of an injury, or you find out that the case wasn't as strong as you thought. But the next thing you know, some guy is calling you from an insurance company, offering you \$50,000 for the case. That's one of the reasons we were motivated to take a lot of those cases, file them, because a lot of our referring lawyers thought that was the way business was done. But then the insurance companies stopped doing that. And we had to communicate that through the system. We had to tell the referring lawyers that insurance companies won't settle them anymore. (Elite, 8 lawyers, age 53).

We discuss a lot of ground rules before we'll agree to take a case. Of course, there's a lot of lawyers who are repeat business. And the ground rules are established. But if it's a new guy, I go through the ground rules with them before agreeing to take the case. (Elite, 28 lawyers, age 49).

Such fine-grained information transfer also leads to joint problem solving. In the most embedded referral relationships, decisions about whether to take a case are sometimes made jointly.

I've never had a situation where [the referring attorney and I] have disagreed about whether we should pursue or not pursue a case. We had one we just finished, where I had an expert in Baltimore I spent a lot of time with. We reluctantly decided that the case was just too difficult to pursue. The beauty of it is that the two of us know the practice and know the medicine, and we can communicate in those terms. There's no posturing or macho stuff involved. (Elite, 8 lawyers, age 53).

Referring attorneys can also help the personal injury attorney overcome obstacles with the client. Referring attorneys who have a preexisting relationship with the client often help the personal injury attorney manage the client relationship. This eases communication with the client.

I find that the referring lawyer in many instances is extremely helpful to me. They usually have a very close relationship with the client. In difficult situations, like one I had recently in which a little girl was injured, the parents were being told by their relatives that this case

was a \$10 million case. It was necessary to tell the family why their case was different [and not worth that much]. The referring lawyer was an old family friend of the clients. The referring lawyer was extremely helpful. He had more credibility [with the clients]. I was the mouthpiece, or the person with the expertise. [The referring lawyer] was the guy they could talk to. (Elite, 8 lawyers, age 53).

### *E. Promoting Quality*

As Uzzi found in his study of New York apparel manufacturers, embedded ties can promote a better quality product.<sup>46</sup> Because the outcome of personal injury cases is so easy to measure, and because referring attorneys are aware of the successes and failures of the personal injury attorneys to whom they send cases, personal injury attorneys feel extra pressure to succeed. They know that loyalty is not blind, and that referring attorneys will look elsewhere if they do not see satisfactory results. When asked what they do to encourage referrals from other attorneys, many personal injury attorneys said that they try to get good results. Good results may mean turning a tough liability case into a win, or getting satisfactory, or better than satisfactory damages.

I think I just try to do the best job that I can do with my cases. . . . I think it comes in through having a good, solid reputation and knowing that you're an honest attorney; you work hard and you do the best you can do for your client. People respect that. (High-end, 5 lawyers, age 30).

For the low-end attorney, good results also mean turning cases around and sending out referral fee checks early and often.

The ones that I pay referral fees to, I try to resolve the case as quickly as possible so they get their money faster. (Low-end, 3 lawyers, age 34).

[Referring attorneys] may shop around for higher turnaround, though I turn them around pretty quick. . . . I send as many checks to them as possible. (Low-end, solo practitioner, age 40).

Personal injury attorneys that serve the client well also help the referring attorney cement his own relationship with the client. If the personal injury attorney does not secure a good result, the client may fault the referring attorney.

Don't blow the case, because if you blow the case, you're not the bad guy, I'm the bad guy for referring it to you. (High-end, 13 lawyers, age 38).

Referral relationships can also benefit the client in other ways. Some attorneys say that they are more conscientious in managing the client relationship when the client comes through another attorney. If there is a referring attorney

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46. Uzzi, *supra* note 10, at 51.

involved, it often behooves the personal injury attorney to take greater care with the client. There are, after all, not just one but two audiences. The referring attorney becomes the third party, watching and evaluating the personal injury lawyer's management of the client relationship.

[When the case comes in through a referring attorney], probably the thing that I do is bend over backwards to give excellent service to the client, and by that I mean above and beyond adequate representation. So, I'd be more apt to handhold and things of that nature because I've always got in mind the feedback that, you know, I want that client, ideally, to be communicating with the referring lawyer and saying how great they're being treated. So, that's a major issue. (Low-end, 2 lawyers, age 52).

#### F. *Social Control*

Granovetter asks the provocative question: how can it be that free markets do not mitigate deceit, yet daily economic life is not riddled with mistrust and malfeasance?<sup>47</sup> The answer, he argues, is found in the fact that much economic exchange occurs in the context of embedded relationships, and these relations both generate trust and discourage malfeasance. Often implicit in this aspect of social networks is that embedded ties serve a social control function. James S. Coleman identifies two mechanisms by which social capital exacts social control. The first is through the production of obligations, expectations, and trust. The second is through the transmission of norms.<sup>48</sup> In practice these two mechanisms are inextricably linked. As in other embedded markets, there is the opportunity for betrayal, or "malfeasance," in the personal injury bar. And, indeed, personal injury attorneys have been known to betray their referral partners. Clients are stolen, referral fees are reneged upon, and case expenses are inflated. However, to some extent, the production and transmission of expectations and obligations in this embedded market holds in check the betrayal of referral partners. In the glass house of the personal injury bar, the betrayal of referral sources moves quickly through the grapevine, potentially damaging an attorney's entire referral base.

We've had cases where it seemed like we were working for free. But, you always pay the referral fee. In one case we had, the referring attorney passed away while the case was still pending. We paid his wife. It gets out. There are attorneys who take a case to the Appellate Court, who say, "I don't have to pay this," for one reason or another. I mean, you must have such unbelievable confidence in your ability to obtain cases that you would do something that asinine. I've heard stories about people that are so bad that I won't refer cases to them. I know

47. Granovetter, *supra* note 9, at 488.

48. James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. SOC. S95, S102-05 (1988).



the names of four or five offices that don't play straight with their referring attorneys. If I'm hearing it, you can bet everybody else is hearing it. Sometimes it's nothing more than a simple misunderstanding and [the personal injury attorney] scrambles to make it right. (High-end, 5 lawyers, age 35).

In addition, referral relationships can also reduce opportunism on the part of the client. The referring attorney becomes the glue of sorts between the client and the personal injury attorney, discouraging the client from exiting the relationship. A few personal injury attorneys say that the client's preexisting relationship with the referring attorney makes the client less likely to take their business elsewhere, or to succumb to other attorneys who might try to steal the case.

Now one of the benefits of it, if you're comparing it to people who respond to an ad, you have a better relationship with the client when it comes referred from another attorney. They may not know that other attorney, but on the other hand, that attorney might have been a family attorney for ten years, so they respect him. . . . See, what you have to understand is that if you have a major case in this town, you'll have people coming to your client's house, literally, after you've represented them, saying, "Your lawyer has had the case for two years and hasn't done anything? That's terrible. I'll take you down and give you a new lawyer. And the lawyer hasn't given you any money? Are you kidding? Here's a thousand dollars right now to change it over." I mean, that's stealing . . . the threat of it is always there, always present . . . sometimes you can have a referring attorney intercede if they know the person better than you do. (High-end, 2 lawyers, age 60).

Referral relationships can also reduce opportunism by the referring attorney. Personal injury attorneys often reject cases they feel are not legitimate in terms of liability or injuries. In those situations, they feel that the case should not be pursued by any attorney, themselves or anyone else. If they have a long-term relationship with the referring attorney, they can pressure them not to pursue those claims.

I looked at my list the other day and he's referred 35 med mal cases over the years, and I've only accepted four of them. The other 31 I turned down, and I told him that if I found out that he had filed any of those, I wouldn't work with him again. (Elite, 8 lawyers, age 53).

## IX. THE CONSTRAINTS OF EMBEDDED REFERRAL TIES

### A. *Maintaining Loyalty*

As Uzzi found that trust in the apparel industry is not "blind," loyalty in referral relationships is not blind loyalty.<sup>49</sup> Some referral partners are loyal,

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49. Uzzi, *supra* note 10, at 219.

others are fickle, even instrumental. Referring attorneys do not shop *cases* routinely, but if they are dissatisfied with the relationship, or with the results, they will shop for a better *relationship*. Though referring attorneys are more knowledgeable about the capabilities of their colleagues, they are not shopping each case or maximizing their profits by negotiating each case on price. Instead, referring attorneys are “satisficing.”<sup>50</sup> They are finding an acceptable, though perhaps not optimal, attorney to handle their clients’ personal injury disputes. It is easier to stay in a mediocre relationship than to seek out a new one. In this context, most personal injury lawyers have “hybrid” ties in their referral networks.<sup>51</sup> Some referral relationships are long-term and involve frequent contact; others are short-term or sporadic. Like Uzzi’s apparel firm networks or Baker’s banking relationships,<sup>52</sup> referral networks in the personal injury bar include both embedded ties and arm’s-length ties and there is both stability and change, or fluidity, in referral relationships.

Though they cannot know for sure, many personal injury attorneys believe that their *primary* referral partners are loyal to them.

There are firms who have made it a firm policy to refer all of their personal injury and med mal to us. . . . There are probably close to a dozen firms in the city who don’t do what we do, who send their work to us exclusively. (High-end, 5 lawyers, age 42).

This attorney explains that having exclusive relationships such as these not only benefits the recipient of the cases, but can be a more efficient way of case management for the referring attorney:

It makes sense that if you can find a firm that can handle your personal injury, or whatever the business is you don’t do. If you find one firm, it’s a lot easier, as you can imagine, to make one phone call to find out how these 15 cases are doing, rather than having to remember, “okay, three I sent to this firm, five to this firm, seven to this firm.” So that’s a policy decision that [referring attorneys] have made. (High-end, 5 lawyers, age 42).

However, exclusive relationships are not universal. Instead, referring attorneys often have a few different lawyers that they will send certain kinds of cases to. Through their reputation and repeated interaction with these firms, referring attorneys become aware of the stratification and niches within the personal injury bar. For this reason, they may develop a few referral relationships, sending certain types of cases to some firms, and other cases to other firms. Most personal injury lawyers do not see this as a betrayal, but understand that they

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50. See generally Herbert Simon, *Rationality as Process and as Product of Thought*, 68 AM. ECON. REV. 1 (1978).

51. See Baker, *supra* note 10, at 595–97.

52. See generally Baker, *supra* note 10; Uzzi, *supra* note 10.

have a particular niche and might not be best suited for a certain case. The referring attorney's loyalty, they say, should be to the client.

I like to say that 70% are loyal. Thirty percent I know who shop around and give cases elsewhere. I don't think it's loyalty. I don't take it the wrong way, because I know who we are, and I know some cases they give to other people that don't do what we do as good as we do. Yet, I know that they give cases to people who I have to realistically say, these people do better work than we do. (High-end, 13 lawyers, age 38).

The loyalty is to the client, not to me. What they are obligated to do, if they're doing their job, is to see what lawyer is best situated to handle what kind of case. If I've had experience in one area, they may conclude I'm among those best situated to handle it. If another lawyer has done well in an area I haven't had experience with, they would be disloyal to their client to send it to me if they have reason to believe someone else will do a better job. (High-end, 7 lawyers, age 60).

In some instances, the variance in embeddedness is not so much about loyalty as it is about productivity. Some referring attorneys are simply more prolific in their referrals than others. Because of these different referral strategies, most personal injury attorneys with a strong referral base have a mix of ties. Some of their referral partners are loyal and have informal but largely exclusive relationships, while other referral partners are more sporadic in their referrals. Even highly embedded, long-term referral relationships are vulnerable to switching. Though referring attorneys are not usually shopping every case, there is fluidity and shifting in referral relationships. Referring attorneys may continue to reinvest in long-standing relationships, but these relationships also come and go if the personal injury attorney fails to live up to expectations, or if other, more promising relationships present themselves.

Over the couple decades we've been doing this, we've seen everything. I mean, we've seen people send them to us, then stop sending to us, send them to other people, and then start sending them to us again. Shopping, I don't see much of that. I would imagine like any business, over the course of years, people will try something new and if they're happy with it, they'll stay. Or, if they're happy here, they don't try something new. (High-end, 5 lawyers, age 43).

I think there are periods when they're loyal. There's a fickleness. Some are loyal, but loyalty in this, look, anything in our society comes and goes and it's not personal. I'm sure there's a lot of personal interest and people are not terribly loyal. (High-end, 2 lawyers, age 60).

Personal injury attorneys understand that trust and loyalty are not blind, and that the referring attorney holds the power when it comes to ending the relationship. Social network theory concerns itself not only with the benefits of

embedded ties, but also with their constraints. Actors in embedded relationships are found to trade short-term gain in the interest of maintaining the long-term relationship.<sup>53</sup> Like economic actors in other embedded markets, most personal injury attorneys with a strong referral base make short-term trade-offs in order to sustain their referral relationships. These trade-offs can be found in what fee-split they will give the referring attorney, whether they will reciprocate in their referrals, whether they will take other referrals, how they treat the client, and how they treat the referring attorney. In short, just about everything that can vary in referral relationships will vary in order to secure and maintain these relationships.

Marcel Mauss discusses the various “bonds of sacrifice” that one enters into in such exchange relationships. These include the obligation to give, the obligation to reciprocate, and the obligation to receive.<sup>54</sup> In fee-splitting, reciprocating on cases, and accepting cases they would not normally accept, all of these obligations are present in the referral relationships in the plaintiffs’ bar.

### *B. Fee-Splitting*

Case referral is fundamentally an economic transaction. Most cases that are referred involve the exchange of referral fees if there is recovery on the case. However, this is less often true in the low-end sector, where the value of the case may not always warrant a fee. The elite are slightly less likely to exchange fees than other high-end attorneys, most likely because the elite secure a larger share of referrals from corporate lawyers, who generally do not accept referral fees.

**Table 8: Fee-Splitting**<sup>55</sup>

All Referral Partners	Low-end (N=71)	High-end (N=56)	Elite (N=30)
<i>Fee-splitting</i>			
Fees exchanged for referrals	68%	95%	77%

In higher value cases, fees may not be exchanged if the referring attorney sent the case because he has a conflict of interest in taking the case, or if the referring attorney works for a corporate firm. Though relatively uncommon, some larger value cases will not involve the exchange of fees if the case is too complex and too time consuming, and the personal injury attorney would not accept the case if he has to split the fee.

I’d say in recent years, most of the ones I’ve gotten have not involved referral fees. Frequently, the kinds of cases that are referred are ones

53. See generally Baker, *supra* note 10; Uzzi, *supra* note 10.

54. MARCEL MAUSS, *THE GIFT: THE FORM AND REASON FOR EXCHANGE IN ARCHAIC SOCIETIES* (1990).

55. Parikh, *supra* note 5, at 128.

that I wouldn't take if there were any significant kind of referral fee. They're often too costly and difficult. (High-end, 2 lawyers, age 56).

In addition, the referring attorney might waive the fee if the client is a family member or close, personal friend, in which case the referring attorney is reluctant to objectify this relationship by taking a fee. In those cases, the personal injury attorney often agrees or offers to increase the client's share of the award by giving the referral fee to the client.

And, there are situations where an attorney, because of a personal relationship they have with the client, will ask, or I will suggest a reduction of my fee passed on to the client. You know, somebody refers their mother for instance, the fee is passed on to the client versus a referral fee. That's a common situation. (Low-end, 2 lawyers, age 52).

While most cases involve the exchange of fees, fee-splits vary a great deal. A minority of personal injury attorneys have a fixed referral fee and do not deviate from that. It might be a third of the attorney fee, or even half of the attorney fee. They might only deviate from this when taking a medical malpractice case. Medical malpractice cases in Illinois are governed by a statutory fee schedule which allows for the attorney handling the case to secure 33% of the first \$150,000 and 25% of any amount above \$150,000. Oftentimes in medical malpractice cases, the referral fee is also graduated accordingly. However, most personal injury attorneys also adjust the referral fee based on the particular case or the particular referring attorney. They take into account how much work the referring attorney puts in on the case, how much the case is worth, how complex and time consuming the case is, and how important the referring attorney is to their business. Adapting the fee-split to the particular case is one way in which personal injury attorneys maintain some level of control over their profitability, and one way in which personal injury attorneys reward their referral partners. Some reward better cases with a better fee-split. Some attorneys give their better referral sources a larger fee-split on all of their cases. This serves as a symbol of gratitude for their loyalty, as well as a way of tying the referring attorney to the firm.

There are two law firms to whom we give 50% of our fees, which is somewhat extraordinary. We do that because we know for a fact that we have an exclusive with them and they have also proven over the years that they send us quality cases. (High-end, 5 lawyers, age 42).

If it's a decent case, if it's got some money, then it's a fifty-fifty split. You know, if it's a soft-tissue case, and you're going to get \$500, then we look at it and adjust it based on the potential value of the case, so it could be 30%. (Low-end, 2 lawyers, age 51).

A small number of personal injury attorneys also say they give credit to "tail cases." Any future business arising out of a single referral is credited back to the

original referral source, even when he is not directly responsible for the subsequent business.

There's also a concern about what we call tail cases, which is, if you're a lawyer and you refer me a case, and we work on that case, and three years later, some family member within that family is injured, and they come to us because obviously we have developed this relationship, [referring attorneys] have to trust us to pick up the phone and say, "a tail case has come in and we are considering you to be the referring attorney." One of the ways that we've been able to develop the network sources we have over the years is because it's commonly known that if you send me a case, any case, be it a year later, ten years later, or twenty years later, that is either directly or indirectly related to your having sent me that case, it is your case for purposes of a referral fee. I consider [the client] to be my client, but for financial purposes and networking purposes, I consider the referral source to always have a financial or pecuniary interest that arises out of the initial referral. (High-end, 5 lawyers, age 42).

### C. *Reciprocity*

Another common strategy for building loyalty is to reciprocate in the referral relationship. The personal injury attorney might send the referring attorney cases that he is better suited to handle. This often occurs in the low-end sector, where referral fees may not always be exchanged because of the size of the cases. Reciprocating the referrals is one way to repay the referring attorney. About half of the referral relationships for the low-end sector are reciprocal; that is, cases flow both ways. Reciprocity is also found in the high-end sector, where just under half of all referral relationships involve the two-way exchange of cases. The elite are least likely to reciprocate referrals.

**Table 9: Reciprocity**<sup>56</sup>

All Referral Partners	Low-end (N=71)	High-end (N=56)	Elite (N=30)
<b>Reciprocity</b>			
Also sends cases to referral partner	51%	41%	27%

In both strata, reciprocal relationships are most likely to occur when the referring attorney does not practice personal injury law. In those situations, the referring attorney sends along his personal injury cases and the personal injury attorney sends along cases that the referring attorney might handle (e.g., criminal defense, real estate, etc.). For example, many personal injury attorneys have developed stable reciprocal relationships with attorneys who handle workers' com-

56. Parikh, *supra* note 5, at 128.

pensation cases. Though there are similarities between workers' compensation and personal injury cases, most attorneys do not handle both types of cases. Even firms that handle both types of cases usually have some lawyers working on workers' compensation and others working on personal injury cases. The practice of workers' compensation is seen to be different from personal injury in two fundamental respects. First, in workers' compensation cases there are relatively stable standards for assessing injuries and compensating victims. These standards are not typically adopted in personal injury cases. Second, and perhaps more important, workers' compensation cases are tried in an independent administrative body, the Industrial Commission, which operates under different laws, has a different set of actors and a different set of rules.<sup>57</sup> Many personal injury attorneys characterize the Industrial Commission as an old-boys network that is difficult to penetrate if you do not play in that arena often enough. For these reasons, most personal injury attorneys refer out workers' compensation cases, or give them to another partner in the firm who does handle those types of cases. However, because they both involve injuries, many personal injury attorneys routinely run across workers' compensation cases, and many workers' compensation attorneys routinely run across personal injury cases. Oftentimes, a single plaintiff will have both a workers' compensation case and a personal injury case, handled respectively by different attorneys. Cross-referrals between the two specialties are quite common.

Most of the time I will refer worker's comp to a very good friend in the building here who refers me PI cases; so, we have a thing going. (Low-end, 4 lawyers, age 51).

Frequently, their referrals to us are existing workers' compensation clients. They might send us the same client. If somebody is hurt because a boom operated by a third party, other than their employer, malfunctioned, it's a third party action so we share the client. They handle the [worker's] comp action and we handle the third party [personal injury] action. (High-end, 5 lawyers, age 42).

#### *D. Taking Cases They Would Not Normally Take*

Once they have entered into a referral relationship, personal injury attorneys also feel an obligation to accept future cases from the same referral source. Most personal injury attorneys with a referral-based practice say that they will take a case below their value threshold in order to sustain the relationship with the referring attorney. Many low-end attorneys subsist on these smaller cases. Further, this is one of the primary reasons why many high-end personal injury attorneys accept smaller value cases.

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57. See generally Illinois Workers' Compensation Commission, <http://www.state.il.us/agency/iic/> (last visited Sept. 14, 2006).

I take cases all over the board. I mean I probably take cases I shouldn't, I take cases other lawyers wouldn't. When your clients are other lawyers, you have to do whatever it's going to take to keep them sending you cases. (Low-end, 4 lawyers, age 51).

Let's say we've got a very good referring source. You can't say no to the smaller cases. . . . We don't go out of our way to do that. They're mostly accommodations. (Elite, 24 lawyers, age 52).

Though rare, some personal injury attorneys will even take cases with poorer liability to maintain a referral relationship. However, most personal injury attorneys say that they will not do this, as a poor liability case is likely to result in a bad outcome for everybody involved. Without evidence of negligence, there will be no compensation — not for the client, not for the personal injury attorney, and not for the referral source. Rather than spend their time on losing cases, personal injury attorneys usually turn down cases, even from their top referral sources, which have poor odds for recovery.

I give a larger share of the fee to my top referring attorneys. . . . I mean, lower value is one thing, but the liability is totally different. I mean, there's some bizarre fact situations that you get into in this business that they want you to take and you're spending your time and you're not getting paid. (High-end, 2 lawyers, age 60).

While taking the case might not benefit anybody, they can risk a referral relationship by turning down such a case. They are usually willing to run that risk to preserve their own business. The lawyer above continued:

And I think we lose referring attorneys like that, by getting out of a bad case. I have a case like that . . . now we are withdrawing from the case, and he may not be a referring attorney much longer. I'm not on a suicide mission for him. (High-end, 2 lawyers, age 60).

### *E. Other Trade-Offs*

Aside from adjusting their fee-splits, reciprocating in their referrals, and taking cases they wouldn't normally take, personal injury attorneys find many other ways to extend gratitude to their referral partners. Referral partners are taken to lunch, thrown holiday parties, and given coveted tickets to sports games. Personal injury attorneys also help their referral partners in less tangible ways. They do things that demonstrate their concern for the referring attorney's personal welfare. Making noneconomic, or personal, sacrifices is one way that personal injury attorneys de-objectify the relationships with their referral partners.

[My partner] is the friendliest guy in the whole world. He's very active in helping [referral partners] with just about anything. He'll help them with cases that don't come in. He'll help them with problems



when their kids get in trouble. People care about that. (High-end, 5 lawyers, age 43).

Referral relationships are our lifeline. Half of my job is trying to keep the referring attorneys busy and happy. (Elite, 18 lawyers, age 49).

#### X. BOUNDARIES

Most personal injury attorneys make some sacrifices in the name of their referral relationships. However, there are limits to how much personal injury attorneys will do for their referral partners and these limits vary wildly. Some make significant financial compromises and bestow all sorts of gifts upon their referral partners. Others barely make a sacrifice. Most are in between, building their name, nurturing relationships, but not aggressively marketing themselves.

We do a newsletter — that silly little brag sheet that you saw when you walked in. We do that twice a year and they summarize generally the last six months. We just did a mass mailing. About 2,000 go out to past referral sources, and I have friends at larger firms who have never sent me a case, but I'll send it to them. We thrive based on our ability to get that first case in the door. (High-end, 5 lawyers, age 42).

We do the best work we can on a case. That's all. We just work on a case. We don't kiss ass, we don't take people to lunch, we don't buy them gifts and presents. (High-end, 7 lawyers, age 60).

You take people to lunch. You talk to people. You send people this article. You do as much marketing as you can. That is why you speak at seminars. That is why you have a website. That is why you do marketing in general. Only in this business, marketing is really marketing not to the ultimate user of the services, but to the referring attorney who is a broker. So, you are marketing to the broker rather than to the client. (Elite, 21 lawyers, age 55).

It gets around through word-of-mouth. So you lecture. You become involved in the bar associations, the Chicago Bar. You become involved in the trial lawyers association. You try cases, get verdicts, and let it be known that you have. Write articles, and so forth (Elite, 8 lawyers, age 67).

Those who make the greatest sacrifices are low-end and high-end attorneys with a significant attorney referral base. They depend on attorney referral for their livelihood, and have a relatively small number of referral partners that carry this burden. However, the elite of the personal injury bar and other high-end attorneys with a widespread reputation are less likely to make concessions for their referral partners. They do not make as many sacrifices because they do not have to. As discussed earlier, though the elite are as dependent on attorney referral as other high-end attorneys are, the elite have larger referral networks, mak-

ing them less dependent on any single referral partner. Further, because of their skills, their reputation for taking good cases, and their history of success, referring attorneys seek them out when they have a good case.

Because they are highly sought after, and are believed to have unique skills and qualifications, most of the elite are in great demand and have more business than they can handle. Those at the top of the personal injury bar are rewarded with more opportunities for continued success. As Robert K. Merton found, published scientists are more likely to get published and more likely to be rewarded with other opportunities for success.<sup>58</sup> In the same way, the more successful plaintiffs' lawyers are rewarded with both more business and better cases.

Ironically, when it comes to their referral relationships, the most well-known elite attorneys have much in common with the low-end, client-based sector of the personal injury bar. The low-end personal injury attorneys that get most of their cases through clients, advertising, and niche markets, also make fewer compromises and often do not even split fees with referring attorneys who do send them cases. Whether this explains their low attorney referral base, or simply reflects their business strategies, these personal injury attorneys invest little in their referral relationships. The elite also covet the consumer direct practice of some of the low-end sector. Because some of the elite have reputations that extend beyond the personal injury bar and into the public domain, some of them actively seek out consumer direct business in order to bypass the need to pay referral fees. They do this by holding press conferences on big cases, by writing editorials to the local papers, and by other means of getting their name out. They market themselves to consumers, but they generally do not advertise.

However, while a client-based practice is beneficial from a fee standpoint, these practices are not without their sacrifices and obligations. Client-based attorneys, who depend so heavily on word-of-mouth from past clients, make the same kinds of sacrifices for past *clients* that referral-based attorneys make for their referral partners. When a new case comes in through a past client personal injury attorneys will often take smaller cases, reduce their attorney fee, and even take a case that they might deem marginal, in order to sustain their relationship with the past client. Regardless of where personal injury attorneys get most of their cases, they make concessions in order to keep that business coming in. Wherever past ties are seen as potential avenues for future business, sacrifices are made.

## XI. CONCLUSIONS

The market for personal injury cases is not a free-for-all. Instead, it is a highly structured market. The channels by which cases flow in the plaintiffs' bar

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58. See Robert K. Merton, *The Matthew Effect in Science II: Cumulative Advantage and the Symbolism of Intellectual Property*, 79 *ISIS* 606, 607 (1988).

are well-worn. Personal injury cases are not evenly or randomly distributed among personal injury lawyers. This is not by chance, or even because of informed consumers. Consumers are not knowledgeable in this setting. It is personal injury lawyers and their referral sources that reinforce and reproduce the stratification within the personal injury bar. Personal injury lawyers send cases both up and down the hierarchy, and non-personal injury lawyers send cases to personal injury lawyers in recognition of the stratification in the profession.

Like the New York apparel market<sup>59</sup> and the options market,<sup>60</sup> the exchange of personal injury cases takes place in the context of an embedded market. Referral relationships are long-term and are characterized by frequent contact. These embedded ties exhibit many of the market-enhancing features of other embedded markets. Referral relationships elevate the standards for performance, both in terms of how cases are handled and how clients are handled. Embedded referral relationships promote trust, efficiency, fine-grained information transfer, joint problem solving, and quality. They also reduce opportunism on the part of the attorney, the referral partner, and the client. Referral relationships also provide personal injury attorneys with greater adaptability and control over their practices. Careers are built, changed, and retired through referral networks. In this way, referral networks serve to reproduce the profession.

However, while referral relationships have significant benefits for the personal injury attorney, they also impose constraints. In the glass house of the personal injury bar, personal injury lawyers and their referring attorneys know who handles what types of cases, how well they do with juries and opposing counsel, and how well they treat their referring attorneys. In this economic arena, loyalty is not taken for granted. Personal injury lawyers make many sacrifices to maintain relationships with their referring attorneys. These sacrifices include better fee-splits, reciprocating on cases, taking cases they wouldn't normally take, and doing other favors for their referral partners. Just about anything that can vary in the relationship presents an opportunity for the personal injury lawyer to build loyalty. Once a personal injury attorney accepts a case from a referral source, he enters an unspoken bond of obligation that requires ongoing sacrifice.

Yet, the benefits of the referral system for the personal injury lawyer generally outweigh the attendant sacrifices. The referral system transforms the arena for personal injury cases from an "arm's-length" exchange in which personal injury lawyers must compete on the open market for every new case, to an embedded professional market in which personal injury lawyers can rely on their peers to bring them business. In doing so, the referral system serves to reduce much of the uncertainty associated with the practice of personal injury law.

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59. See Uzzi, *supra* note 10.

60. See Baker, *supra* note 43.